

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-220610

DATE: January 30, 1986

MATTER OF:

Lanier Business Products, Inc.

DIGEST:

1. Protest that awardee's brand name product does not comply with salient characteristics is denied where agency's interpretation of salient characteristic is reasonable and awardee's product meets the agency's needs.
2. Allegation that awardee's brand name product does not meet two salient characteristics in addition to the one named in initial protest filed 7 weeks after the initial protest is untimely.

Lanier Business Products, Inc. (Lanier), protests the award of a contract to Sony Corporation of America (Sony) under invitation for bids (IFB) No. 4042, issued by the Federal Bureau of Investigation (FBI) for portable dictating equipment. Lanier alleges that Sony's brand name equipment was nonresponsive to the salient characteristics listed in the brand name or equal IFB.

We deny in part and dismiss in part the protest.

The IFB was issued on August 28, 1985, with bid opening on September 18, 1985, for the Lanier model AL/CII, Sony model BM-17 or equals. Lanier, Sony and Business Equipment Company submitted bids offering the brand name products. Sony, which bid the BM-17, was the apparent low bidder. Award was made to Sony, after technical review of the equipment, on September 27, 1985. Lanier filed its protest here on October 2, 1985, 1 day after it was notified of the award.

According to Lanier, on September 11, 1985, it notified the contracting officer's technical representative (COTR) "that the BM-17 could not meet the salient characteristic requirement of one button control, instead requiring the use of several different buttons for dictation and edition."

034423

Salient characteristic No. 3 in the IFB states "one button control-it facilitates editing and dictating." Lanier further states that it advised the COTR that if the BM-17, were bid, it was then Lanier's position that the COTR must advise the contracting officer to reject the bid as nonresponsive.

The FBI argues that if Lanier were aware of these facts prior to bid opening, then the allegation that the BM-17 does not comply with the salient characteristics is untimely. Lanier contends that the conversation with the COTR was an oral protest and, consequently, the protest filed 10 days after bid opening is timely.

We find the protest to be timely, but on another basis.

While Lanier raised the issue with the COTR of the Sony model BM-17's noncompliance with the salient characteristics, it did not know at that time whether the model would be proposed by Sony and, if it were, whether it would be modified to comply with the salient characteristics. See Potomac Industrial Trucks, Inc., B-203119, Feb. 3, 1982, 82-1 C.P.D. ¶ 78. Further, the FBI had not taken a position adverse to Lanier's interest until it had evaluated the offered products and made an award decision. Therefore, we find Lanier's protest, filed within 10 days of its receiving notice of award, to be timely and for consideration.

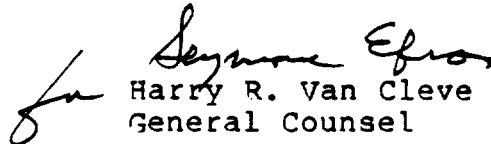
Lanier's offered model of dictating equipment uses one slide switch which is moved to one of four positions (i.e., record, stop, play and review) to accomplish editing and dictating. The Sony model BM-17 employs four separate buttons for editing and dictating labeled dictate, review, listen and stop. By pushing those four buttons, a person can dictate and edit on the Sony model.

The FBI interprets the salient characteristic "one-button control" to mean that the operator can activate each function on the device by depressing only one button at a time as opposed to depressing multiple buttons simultaneously.

We find the agency's interpretation of the salient characteristic to be reasonable. The FBI was attempting to limit acceptable recorders to those which only required one button to be depressed at a time to activate a function. This is in contrast to certain types of recorders which require that two buttons be pressed simultaneously, i.e., both the play and record buttons must be pressed to record or dictate. This interpretation is given additional credence by the fact that the Sony was listed as an acceptable brand-name.

We will not consider Lanier's arguments that Sony's model does not comply with two other salient characteristics--end of tape warning and rechargeable batteries--which were untimely raised. These issues were not raised until 7 weeks after the initial protest was filed. New and independent grounds of protest such as these must independently satisfy the timeliness requirements. We have held that a protester which is challenging an award or proposed award on one ground should diligently pursue information which may reveal additional grounds of protest. See General Electric Co., B-217149, Jan. 18, 1985, 85-1 C.P.D. ¶ 60. If Lanier had diligently sought information on the BM-17, it would have had the information on the date of the award or soon thereafter. Lanier, as previously noted, did not file the additional allegations in writing until it commented on the agency report on November 22, 1985, which was 7 weeks later. These arguments therefore are dismissed as untimely.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel